

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

**Maurice Gene Hand, Director of the
Communications Department of the
Nebraska Public Service Commission,
and Jeffrey L. Pursley, Director of the
Nebraska Universal Service Fund
Department of the Nebraska Public
Service Commission,**

Complainants,

v.

Qwest Corporation,

Respondent.

Application No. DC-71/NUSF 53

QWEST CORPORATION'S POST-HEARING BRIEF

Qwest Corporation ("Qwest") files its post-hearing brief relating to the Departmental Complaint ("Complaint") filed in this matter by the Communications Department and the Nebraska Universal Service Fund Department (collectively the "Department" or "Staff") as follows:

I. Introduction

To Qwest, two things are paramount: satisfying customers and providing superb service quality. There is little question that many of the Qwest customers who testified at the hearing of this matter have experienced more problems than is satisfactory to Qwest. However, the Complaint accuses Qwest of providing access line service that is legally "inadequate," and seeks to fine Qwest or withhold NUSF support. Thus, it is

appropriate to carefully examine Qwest's service quality against the objective criteria set forth in the Commission's rules, and to carefully examine the problems experienced by each person who filed a complaint with the Commission and/or testified at the hearing of this matter (sometimes referred to as "Customers"). This examination must be made on an individual customer level and also at the exchange level and beyond.

Qwest does not seek to minimize the problems discussed at the hearing – but rather to accurately understand and resolve them. At the same time, however, the specific facts of each of the complaints, the testing done in connection with this Complaint, Qwest's response and ultimate solution of nearly every problem reported, and Qwest's compliance with each objective service quality measure currently in place in Commission rules, require a finding that Qwest's service in Valentine is adequate. In the alternative, should the Commission conclude that additional reporting and testing would be appropriate to assure both the Commission and Qwest's customers that Qwest is taking all appropriate steps to ensure that the service quality issues have been resolved and will continue to be resolved, Qwest proposes a plan for doing so below.

II. Background

Qwest began receiving an increased number of trouble reports from Valentine customers¹ during the summer of 2005 – at the same time Qwest was in the process of completing a multi-million dollar upgrade to part of its network in rural Valentine. Fifteen

¹ Some of these customers receive their service from NT&T, a CLEC, using Qwest QPP facilities, and their complaints and trouble reports came through NT&T. Of the twelve witnesses who testified at hearing, three had NT&T service at the time of the hearing, and a fourth had switched from Qwest to NT&T and back to Qwest again. This ratio is consistent with the general ratio of NT&T customers throughout the Valentine exchange, as NT&T serves approximately 1000 of the 2500 access lines in service.

of these customers – representing less than one percent of the access lines served in Valentine – filed informal complaints with the Nebraska PSC. Between June 2005 and the hearing date of July 20, 2006, these fifteen customers filed 31 complaints with the Commission. However, despite these complaints, Qwest's trouble reports never exceeded six per hundred customers per month in the Valentine exchange, and only exceeded five per hundred in one month. Qwest promptly responded to every trouble report it received, investigated and repaired the problems, and if the problems reoccurred, Qwest further isolated and corrected the identified problems. These problems have been largely resolved: trouble reports presently are fewer than three per hundred, and Qwest has received only two trouble reports from the Customers in the six weeks since the hearing in this matter. Commission rules set a standard of six trouble reports per hundred access lines per month, averaged over a six-month period. NEB. ADMIN. CODE. Title 291, Chapter 5, Rule 002.004.² In addition, testing of the Customers' lines directed by Staff shortly before the hearing yielded results in full compliance with Commission standards set forth in Rule 002.13, for every line tested.

In response to the customer complaints, Staff brought a complaint alleging Qwest's service was not "adequate" under Rule 002.02.³ Based on Qwest's alleged failure to provide "adequate" service, Staff asked that the Commission withhold an unspecified amount of NUSF support pursuant to Neb. Rev. Stat. § 86-324(c),⁴ and/or

² Future references to Commission rules shall be in the format "Rule XX."

³ Rule 002.02 provides: "Each exchange carrier shall provide adequate access line service. In determining whether the access line service provided by an exchange carrier is adequate, the Commission's consideration will include, but shall not be limited to, the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints and held applications, the nature of access line service offered by the carrier and the nature of the access line services desired by the public served."

⁴ Section 86-324(c) provides that the Commission "may withhold all or a portion of the funds to be

fine Qwest a similarly unspecified amount up to \$10,000 per day, or \$2,000,000 per year, pursuant to Neb. Rev. Stat. § 75-156. A hearing was held on July 20, 2006, in Valentine, Nebraska, during which the Commission received evidence from the Department, Qwest, and several of the customers who had filed complaints. As discussed in more detail below, this evidence does not support either a finding that Qwest's service is not adequate under Commission Rules, the imposition of an administrative fine, or the withholding of universal fund support.

III. Legal Standards

A. Violation of a Commission Order is a Threshold Requirement for Imposing an Administrative Penalty Under Neb. Rev. Stat. § 75-156(1).

As a threshold matter, regardless of the evidence at the hearing, there is no legal authority to impose a fine against Qwest. Staff seeks unspecified penalties against Qwest pursuant to NEB. REV. STAT. § 75-156(1). That statute provides as follows (emphasis added):

75-156 Civil penalty; procedure; order; appeal.

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman for each violation of (a) any provision of sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390, (b) **a commission order** entered pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska

distributed from any telecommunications company failing to continue compliance with the commission's orders or regulations." In turn, the Commission adopted service quality standards for NUSF support recipients in Progression Order No. 1 in Docket No. NUSF-26, dated July 23, 2002, specifically adopting most of Rule 002.02 (one subsection of Rule 002.02 not relevant here was not adopted as it was deemed not technologically neutral).

Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act, (c) any term, condition, or limitation of any certificate or permit issued by the commission pursuant to sections 75-301 to 75-390, (d) **any rule, regulation, or order** of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390, or (e) **any rule, regulation, or order** of the commission issued under the authority delegated to the commission pursuant to the Grain Dealer Act or the Grain Warehouse Act.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) **any rule, regulation, order, or lawful requirement** issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or **any rule, regulation, or order** of the commission issued under authority delegated to the commission pursuant to the act.

(4) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(5) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or, beginning January 1, 2004, pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(6) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a)

setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular **statute, certificate, permit, rule, regulation, or order** purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

As indicated, § 75-156(1) permits the Commission to impose a penalty of \$10,000 per day, to a limit of \$2 million per year, “for each violation of . . . (b) a **commission order** entered pursuant to the . . . the Nebraska Telecommunications Regulation Act [or] the Nebraska Telecommunications Universal Service Fund Act . . .” (emphasis added). As justification for the penalties sought, Staff alleges that Qwest violated Commission Rules 002.02 and 002.08, which were enacted under the authority provided by the Nebraska Telecommunications Regulation Act. Staff does not allege that Qwest violated any Commission order.⁵

The lack of any allegation that Qwest violated a “commission order” is because Qwest violated no “order” of the Commission, but at most a “regulation,” such that no penalty may be assessed. The language of 75-156 (emphasized in bold above) and related statutes demonstrates a statutory distinction between “rules,” “regulations” and “orders.” For example, § 75-156(1)(d) permits the Commission to issue a penalty for violations of “any rule, regulation, or order” of the Commission issued under the authority delegated by the statutory article addressing motor carrier regulation. Section 75-156(3)(b) requires the commission to notify an accused party, “specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated.”

⁵ As discussed in more detail below, nor does Staff allege that Qwest violated any of the Rules following Rule 002.02 that set forth the objective standards by which service quality is to be measured. Finally, Staff does not allege any particular failure of Qwest’s maintenance program required by Rule 002.08.

And, as noted above, § 86-324(2)(c) distinguishes violations of “orders” and “regulations” as bases for withholding or reducing NUSF support.⁶ Presumably, the drafters of these statutes knew how to include a reference to a “regulation” or “rule” that could be violated, giving rise to a penalty under section 75-156, but apparently chose to omit these terms from the portion of the statute that provides the Commission with the authority to assess a civil penalty against telecommunications carriers. The absence of the terms “rule” or “regulation” from section 75-156(1)(b) indicates that Qwest must violate a Commission order before penalties may be assessed. *Cf. New England Tel. & Tel. Co. v. Public Utils. Comm'n*, 742 F.2d 1, 6 (1st Cir. 1984) (holding that an FCC regulation is not an “order”).

In addition, in the Alltel case noted above (Docket C-2483), even though the Commission found violations of Commission Rules, the Commission took pains to specifically describe the remedial plan it implemented in that case as a Commission order that could later give rise to a fine under section 75-156:

This order is a telecommunications order entered pursuant to the Commission's statutory authority in accordance with chapter 86 of Nebraska Revised Statutes; therefore, violation of this order is subject to administrative penalties pursuant to *Neb. Rev. Stat. § 75-156* (Cum. Supp. 2000).

Consistent with this precedent and the structure of section 75-156, the Commission may not impose an administrative penalty in this case.

B. NUSF Support May Be Withheld Only Temporarily; and Only While Qwest Continues in Violation of a Commission Order or Regulation.

Staff also requests that Qwest's NUSF support be withheld pursuant to Neb.

⁶ Thus, withholding NUSF support does not raise the same statutory interpretation issues that assessing a penalty would, since withholding support under § 86-324(2)(c) can be triggered by failing to comply with either a “rule” or a “regulation.”

Rev. Stat. § 86-324(2)(c). That statute permits the Commission to withhold or reduce NUSF support if a carrier “fail[s] to continue compliance with the commission’s orders or regulations.” Progression Order No. 1 in Docket No. NUSF-26 incorporates the requirement of adequate service in Rule 002.02 and related rules. Thus, in order to support the withholding of NUSF support, Qwest must be found to “fail to continue compliance with” Rule 002.02.

The Commission cannot properly withhold NUSF support from Qwest, because Qwest is not “failing to continue compliance with the commission’s orders or regulations.” NEB. REV. STAT. § 86-324(c) does not permit the Commission to permanently deprive Qwest of NUSF support, but only to “withhold” that support during periods that Qwest is failing to continue compliance. *BALLENTINE’S LAW DICTIONARY* (3d Ed.) states that “[w]ithhold implies rather a temporary suspension, than a total and final denial or rejection; as to withhold compensation.” *Accord United States v. Dumas*, 149 US 278, 284 (1893). This language requires a Commission finding that Qwest is presently fail[ing] to continue compliance with Commission regulations or orders in order to withhold NUSF support, and the withholding of that support can last only as long as Qwest is out of compliance. As demonstrated by the facts at the hearing, and explained in more detail below, Qwest’s service has been adequate at all times. Moreover, current service quality measures and the fact that Customers have placed only two trouble reports since the hearing more than one month ago confirm that Qwest is currently in compliance with any rational interpretation of Commission orders or regulations. Thus, the Commission cannot properly withhold any NUSF support.

C. Service Quality Problems Revealed By Excessive Trouble Reports Require Carriers to Develop a Plan Before The Commission Can Find That Service Is Not Adequate.

Rule 002.04 sets a standard for trouble reports of six per hundred access lines, per month, in an exchange, measured over a six-month period. The Rule also provides the remedy that describes the steps the carrier and the Commission are to take if trouble reports are excessive. Pursuant to Rule 002.04C, if trouble reports exceed eight per month in a particular exchange, "it shall be the responsibility of the exchange carrier serving that exchange to develop a plan to improve service in the exchange with the objective being to reduce trouble reports to acceptable levels." Though the Rule does not explicitly require Commission involvement with or approval of the plan, that language requires an intermediate step for carriers to undertake, which logically must occur prior to any finding that service is not adequate, or any other remedies. Thus, to the extent that trouble reports or customer complaints drive any concern on the Commission's part that service quality in the Valentine exchange is substandard, the remedy set forth in the Rules for such concerns is for Qwest to develop a plan to improve service in the exchange to acceptable levels. Even though no such plan is required under the objective standards of Rule 002.04, in order to assure both the Commission and customers that Qwest's service is and will remain of high quality, Qwest proposes such a plan below.

IV. Key Legal Issues

Beyond these threshold issues, there are three major legal issues: (1) whether "adequate" service is defined solely by the objective criteria in the Commission rules, or whether the Commission may take a more subjective or qualitative approach; (2)

regardless of how “adequate” service is to be determined, whether the Commission can make an adequacy determination at the individual customer level, or if adequacy is defined at the exchange level; and (3) assuming a substantive violation of a Commission order can be proved, whether the Commission has alleged, provided notice of, and proved sufficient facts to warrant a fine under the procedural requirements set forth in Neb. Rev. Stat. § 75-156.

A. Defining “Adequate” Service Requires Reference to Objective Service Quality Measures in Commission Rules.

At the hearing and in discovery responses, Staff appears to contend that the Commission can define “adequate” access line service only with reference to Rule 002.02, and that compliance with the rules that immediately follow Rule 002.02 is essentially irrelevant. This view is wrong, and is inconsistent with the approach the Commission has taken in other, similar cases.

Rule 002.02 provides:

Each exchange carrier shall provide adequate access line⁷ service. In determining whether the access line service provided by an exchange carrier is adequate, the Commission's consideration will include, but shall not be limited to, the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints and held applications, the nature of access line service offered by the carrier and the nature of the access line services desired by the public served.

Rule 002.02 is immediately followed by a number of more specific rules that more completely describe most of the listed factors, most of which provide objective

⁷ “Access line” is defined by Rule 001.01B as “The facility used by the exchange carrier to provide dial tone to a subscriber from the central office through and including the Network Interface on the subscriber's premises.” Thus, long distance and advanced services are excluded from the definition of access line service, and are not relevant to this proceeding.

measures of service quality, including Rules 002.03 (Interruptions of Service);⁸ 002.04 (Trouble Reports); 002.05 (Emergency Operations and Power); 002.08 (Maintenance Program); 002.10 (Tests); 002.11 (Answering Time Objectives); 002.12 (Dial Service Objectives); and 002.13 (Loop Transmission Objectives). Thus, the Commission has enacted specific rules that enable it to measure “the adequacy of the carrier’s plant and equipment.” The Loop Transmission Objectives are addressed in Rule 002.13 and the Maintenance Program requirements in Rule 002.08. The specific rules that address service interruptions are contained in Rules 002.03 and 002.05. The specific rules that address trouble reports and customer complaints are Rule 002.04 and Rule 002.02B, the latter allowing a carrier or a subscriber to submit disputes regarding service quality to the Commission.⁹ The rules addressing held applications are specified in Rules 002.015 and 002.016. Every material portion of Rule 002.02 is matched by a specific rule that more clearly and objectively spells out the standards or requirements for compliance.

Staff does not allege Qwest has violated any of the objective standards set forth in rules 002.03, 002.04, 002.10, 002.11, 002.12, or 002.13. With respect to these specific rules that follow the general statements of Rule 002.02, Staff only claims that Qwest’s maintenance program is inadequate under the generalized objective of Rule 002.008. Rule 002.08 requires “an adequate maintenance program . . . for the purpose of insuring rendition of adequate service at all times.” Staff’s analysis regarding this Rule is circular, revolving around the proper definition of “adequate service.” Staff simply

⁸ The Service Interruption rule does not contain any objective standard, but requires “all reasonable efforts to prevent interruptions of access line service,” and requires credits and refunds if outages do occur.

⁹ This proceeding was initiated as a Departmental Complaint; it was not initiated by any subscriber.

claims that because Qwest's service is inadequate, and thus its maintenance program must be inadequate. Staff fails, however, to point to any objective failure of Qwest's maintenance program.

The Commission has established objective service quality measures in its rules for several reasons. First, reference and adherence to the objective rules avoids arbitrary evaluations of service quality. Second, reference to the objective rules provides clear benchmarks and notice to carriers as to what constitutes adequate service, so those carriers can appropriately plan, manage, and target their compliance efforts. Third, defining adequate service by objective standards ensures that service quality determinations are consistent throughout the state – in rural settings and urban ones, in small towns and large towns, in highly competitive areas and areas with few competitors. Fourth, objective standards provide notice to carriers regarding what conduct or service quality levels might subject them to imposed plans, fines, or NUSF withholding. Fifth, customers can see objective measures of the service quality they can expect to receive, and receive reasonable assurances through these standards that the Commission will enforce those standards. It would be manifestly arbitrary, unfair and, in Qwest's view, illegal for the Commission to ignore the objective standards set forth for measuring service quality in this proceeding.

A recent Commission opinion provides guidance for determining whether service is "adequate." In a 2001 proceeding against Alltel, Docket No. C-2483, the Commission found that Alltel had failed to provide adequate service in violation of Rule 002.02, but specified its findings with reference to the specific rules that followed, specifically Rule

002.11:¹⁰

Upon review of the number of complaints received while the record was open and the evidence presented at hearing, the Commission finds that ALLTEL has failed to render adequate service in conformance with this rule [002.02].

More specifically, the Commission finds that ALLTEL has failed to meet the objectives enumerated in Neb. Admin. R. & Regs., tit. 291, ch. 5, section 002.11 .

...

The Commission should follow that analytical process in this case, as well. At the hearing, specific evidence was presented addressing Qwest's compliance with these specific rules, notably the trouble report standards in Rule 002.04 and the loop transmission objectives in Rule 002.013. The Commission can no more ignore Qwest's evidence that it complies with the specific Rules and conclude that Qwest's service violates Commission Rules on service adequacy than the Commission could ignore evidence that another carrier's service fails to meet the objective standards and still conclude that the carrier's service complied with those Rules.

B. Service Adequacy Should Be Evaluated at the Exchange Level.

Staff appears to allege that adequacy of service should be evaluated on the basis of individual end users, in contrast to the controlling rules that measure service quality at the exchange level or above. The Rules indicate adequacy of service must necessarily be measured at the exchange level or above. The trouble report target (Rule 002.04) is based at the exchange level. Any maintenance program (Rule 002.08) would have to be implemented on an exchange or larger level. Rule 002.02D, a sub-rule to the general rule at issue in this case, requires "traffic studies" to be made and records retained to monitor the provision of "sufficient equipment and adequate operating forces." Traffic studies cannot be performed at the individual customer level,

¹⁰ Rule 002.11 sets an objective standards for answering time objectives.

and "operating forces" cannot be allocated to individual customers, but rather at the exchange level or above. Answering time objectives (Rule 002.11) (e.g., toll and assistance calls), dial service objectives (Rule 002.12) (e.g., 98% dial tone within 3 seconds, 97% intraoffice calls completed without all-busy condition) are expressly measured at the wire center level or above.¹¹

In addition, Rule 002.04C requires Qwest to keep its trouble reports below a particular percentage, six percent, per month, in each exchange, which reflects that a telecommunications company's adequacy of service quality is evaluated on an aggregate, not individual, basis. This view is the only logical view. Providing telephone service is an extremely complex undertaking, involving millions of dollars of high-tech equipment and miles and miles of cable and wires. Every carrier will have instances where a customer or a small set of customers will experience troubles. Carriers are required to fix these problems as soon as possible, but the mere existence of a complaint by one person cannot justify a finding that Qwest's service quality has violated a Commission Rule. Rather, the Rules are in place to make sure that whatever problems do exist, those problems affect a limited number of customers and that carriers devote appropriate resources to fix those problems promptly. A view that every complaint implies a rule violation would potentially expose every carrier to fines and NUSF support withholding every time a service outage occurs. The Rules recognize that this is an unworkable and impractical approach, and thus propose objective measures beyond which the Commission may impose compliance plans, fines or

¹¹ Measurement of loop transmission objectives (Rule 002.013) (e.g., transmission loss, noise, power influence, loop current) is indeterminate as to whether measurements are to be made at an aggregate or individual level. Regardless, testing performed in connection with this case yielded results within the loop transmission objectives for all lines tested.

withhold NUSF support.

C. The Procedural Requirements of Neb. Rev. Stat. § 75-156 Require Commission Notification of the Existence, Date, Facts, and Nature of Each Act And Omission on Which Each Charge of a Violation is Based.

Section 75-156 requires “the commission [to] notify [the accused party] in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based” No allegation or evidence presented in this proceeding meets these requirements. Neither the Staff nor the Commission has provided a date on which Qwest’s service became inadequate. For example, there is no allegation in the Complaint as to the date on which Qwest was in violation of any Commission rule. Indeed, in response to questioning at the hearing regarding what time periods if any that the Staff contended service was inadequate, Mr. Gray could not identify any particular point in time that Qwest’s service was not adequate, saying, “I don’t know that we are contending there is a specific [inadequacy of access line service] on this day and time.” Tr. 158.¹² Consistent with Mr. Gray’s testimony, the Complaint does not allege any particular date on which Qwest became in violation of its obligations to provide adequate service. In discovery, Qwest asked for that date, but Staff did not provide any date, taking the position that Qwest’s service is inadequate “on each date the Commission received a complaint from a subscriber in the Valentine exchange” as to those subscribers, and “[b]ased on the cumulative nature of the service quality problems in the Valentine exchange” Qwest failed to provide adequate service. Exhibits 17 and 18. The Staff’s approach also fails to consider the testimony of most witnesses,

¹² References to the transcript in this case shall be in the format “Tr. XX,” where XX refers to the page number.

discussed in more detail below, that their service problems were intermittent, and had improved in recent weeks and months. Thus, based on the record, there is no basis for finding any particular "day" on which Qwest's service was inadequate in order to assess any fine under § 75-156.

Other portions of § 75-156 preclude the assessment of a penalty at this time. The language quoted above requires that the Commission provide notice of the existence of a violation (in contrast to mere allegations by Staff) prior to imposing any fine. Accordingly, even if Qwest had violated an order (as opposed to a rule or regulation) the case is not procedurally ripe for a penalty to be assessed. This reading of the statute is consistent with Commission precedent. In the Alltel case discussed above (Docket No. C-2483), the Commission found that Alltel's service was inadequate based largely on the complaints of 30 customers, but the Commission did not impose a penalty or withhold or reduce NUSF support.¹³ Rather, the Commission set forth specific steps for Alltel to take and imposed a monitoring scheme that required regular reports from Alltel and face-to-face meetings with Commission Staff to ensure appropriate progress was being made. Indeed, the Commission used specific language to serve as the foundation from which the Commission could provide notice of a violation of a Commission order in later proceedings:

This order is a telecommunications order entered pursuant to the Commission's statutory authority in accordance with chapter 86 of Nebraska Revised Statutes; therefore, violation of this order is subject to administrative penalties pursuant to *Neb. Rev. Stat. § 75-156* (Cum. Supp. 2000).

The procedural steps required by § 75-156 and outlined in the Alltel order have not

¹³ The complaints raised by the Alltel customers in that docket ranged from items similar to those presented in this case, such as static on the line and dropped calls, to different problems such as excessive hold times and provisioning intervals.

occurred in this case. The Commission has not provided any notice to Qwest of the existence of a violation of any Commission order so no administrative penalty may be assessed.

D. Qwest Cannot Be Fined or Otherwise Penalized for Wholesale Service Quality Issues – Those Matters Are Covered By Other Orders and Agreements.

The Rules set standards for access line service – dial tone – to retail customers. Several of the Customers in this case are not Qwest's customers at all, they are customers of NT&T. NT&T bears responsibility for the service quality provided to those customers – though of course, in turn, Qwest bears responsibility to NT&T for its service quality to NT&T. To fulfill and govern the responsibilities Qwest has to ensure that service to NT&T is of sufficient quality, Qwest and NT&T have interconnection and other agreements in place, which have been approved by the Commission. Those agreements govern Qwest's wholesale service quality to NT&T. Chiefly, the Qwest Performance Assurance Plan ("QPAP") and associated Performance Indicator Definitions ("PID") set up a complex series of service quality measurements for which Qwest must pay NT&T penalties if service quality falls below certain standards. Staff's Complaint could potentially result in Qwest paying a penalty based on trouble reports or complaints from NT&T customers, and also paying a penalty under the QPAP to NT&T for those same service quality problems. With respect to the NT&T customers, Qwest cannot be held responsible in two different contexts for service quality and penalties. Such a scheme would amount to double recovery and would lead to potentially inconsistent service quality requirements and obligations.

V. Testimony at Hearing

Consistent with these legal standards, the evidence at the hearing demonstrated a history of several isolated, intermittent problems, but did not demonstrate that Qwest's access line service violates any Commission rule, regulation, or order.

A. Staff Testimony

Mr. Hand testified that the Commission had received almost no complaints relevant to service quality in the Valentine exchange prior to August of 2004. Exhibit 13 shows that prior to July 2005, when the Commission received four complaints, the Commission had never received more than one complaint in any month. After July 2005, the level of complaints generally decreased, until several complaints, most from persons that had already filed complaints, were filed in May, June, and July 2006, after the Departmental Complaint had been filed and the Department began communicating with the Customers. Mr. Hand did not testify, either in prefiled testimony or at the hearing, that Qwest's access line service in the Valentine exchange was not adequate, or point to any statute, rule, or Commission order that Qwest had violated.

Mr. Gray testified in prefiled testimony that trouble reports in the Valentine exchange were relatively low in 2004, compared to an increase observed in 2005. Mr. Gray testified at the hearing that this spike in trouble reports corresponded with the installation of the GoDigital digital carrier system, Tr. 147-148, which Qwest believed would solve and prevent service quality problems in the Valentine exchange. Cheshier Prefiled, p. 3.¹⁴

¹⁴ References to prefiled or supplemental testimony in this case shall be in the format "Witness Prefiled, p. X." References to Ms. Cheshier's Supplemental Testimony and Second Supplemental Testimony shall be in the format "Cheshier Supplemental, p. X," and "Cheshier Second Supplemental, p. X."

Mr. Gray also testified that in cooperative testing of the Customers' lines in late June 2006, all lines tested, in all areas of the Valentine exchange, over a three-day period (testing was performed on only the first and third days), performed "within the parameters of the Public Service Commission's limits." Tr. 151. This testing indicated that for each line tested, the cable tested out acceptably. Tr. 151-152. The testing performed only evaluated cable from the line tested "to the first active device," and the Commission did not request or perform further testing. Tr. 152, 153-154, 157, 162.

Mr. Gray offered no opinions in either his prefiled testimony or at the hearing that Qwest's access line service was inadequate. Moreover, Mr. Gray did not point to any statute, rule, or Commission order that Qwest had violated. At hearing, but not in prefiled testimony, Mr. Gray testified that in his opinion, the problems resulted from inadequate cable, Tr. 155. However, Mr. Gray offered no evidence of any problems with any cable in the Valentine exchange in support of his opinion. In contrast, Qwest testified that extensive cable testing of the North cable route had been done prior to turning up the system in July 2006, and all underperforming cable had been replaced. Tr. 231. Qwest also testified that "Megger" testing has been done, and is continuing, in order to verify the integrity of the cable sheath throughout the exchange. Tr. 237-238; Hussain Prefiled p. 5.

B. Lisa Krueger

Lisa Krueger testified that she had experienced some service quality problems for several years. However, part of her testimony indicates a potential problem with inside wire. At page 17 of the transcript, Ms. Krueger testified that the upstairs line would lose phone service when it was really hot, but these problems were just on the

upstairs line. These problems do not indicate a Qwest network problem, because otherwise service to both the upstairs portion of her home and elsewhere would be affected equally.

Curiously, and similarly to Mr. Kennedy's testimony later on, Ms. Krueger also testified that one of the problems she experienced was an inability to obtain long distance service. While this claim does not seem possible, it is ultimately irrelevant, because as discussed above, long distance service quality is not at issue in this proceeding.

Ms. Krueger also testified that "[s]ince February, we have had no noise on our line," Tr. 18, even though prior to that time, she "had noise forever, since the day we moved in." Tr. 18. She also, like almost every other witness, praised the work of the Qwest technicians who worked to resolve her service problems. Tr. 20. Ms. Krueger has reported one problem to Qwest since the hearing, which was the result of a bad fuse in a repeater. Ms. Krueger's line was spliced into a vacant slot, and no further problems have been reported. Cheshier Second Supplemental, p. 2.

Ms. Krueger also testified, as did several customers who followed, that she did not contact Qwest every time she experienced a problem. Tr. 19. This testimony deserves some comment. Many of the problems discussed at the hearing were communicated to Qwest for the first time at the hearing. This lack of communication is a significant barrier to solving service quality problems. If customers do not report a problem, Qwest cannot fix the problem. Similarly, the Commission cannot conclude that Qwest's service is inadequate because Qwest has not solved problems customers have not brought to their attention. In addition, when problems go unreported or under-

reported, it makes Qwest's job of understanding the full extent and cause of any service quality problem much more difficult. The reasons why several customers under-reported service quality problems to Qwest are probably driven by a number of different factors. Some customers testified to frustration. One inference to be drawn is that if a customer does not report a problem, it is not significant. Arguing about these reasons accomplishes little, however. The reasons driving under-reporting are not as important as making sure that customers have easy access to simply and quickly voice their concerns to a person who can solve their problems. Commission Rules describe some of the requisites for customer service and the receiving of trouble reports, and Qwest complies with those standards. However, given the context of this case, in the plan proposed below, Qwest suggests potential measures and procedures to make sure Qwest can receive and resolve every complaint these customers have.

C. Roy Breuklander

Mr. Breuklander is a Qwest subscriber who lives along the North cable route. Tr. 26. Mr. Breuklander testified that while he had experienced problems for some time prior to the cutover of the GoDigital system, he had not experienced any problems in the last few days before the July 20 hearing. Tr. 34-35. In addition, as shown in the Second Supplemental Testimony of Mary Pat Cheshier filed on behalf of Qwest, Mr. Breuklander has not reported any problems since the hearing. See Second Supplemental Testimony of Mary Pat Cheshier. This is true even though during the cooperative testing performed on several of the Customers' lines in late June 2006, Qwest technicians and Staff representatives observed irregular inside wiring at Mr. Breuklander's premises that could potentially contribute to service quality problems.

Cheshier Prefiled Testimony (Exhibit 7), Exhibit MPC-1; Tr. 202. Qwest implemented the GoDigital system on the North Valentine cable route on July 12. (Tr. 178). This means that Mr. Breuklander has not reported any trouble with his service in the six weeks since the GoDigital system was turned up in his area. Thus, it appears the GoDigital system may have solved the problems Mr. Breuklander has experienced.

D. Evelyn Foster

Ms. Foster also lives along the North cable route, and is an NT&T subscriber. Tr. 36. She reported problems that had been occurring for some time, but also noted that the service had been "pretty good" since the GoDigital system was turned up on the North route a week before the hearing, except for a period during which Qwest technicians were working on the line. Tr. 43. Ms. Foster also has not reported any problems with her service since the time of the hearing. Second Supplemental Cheshier Testimony.

In addition, there was some concern on the part of the Commission that the Fosters were assessed a trouble isolation charge in connection with five repair calls between May and November 2005. Qwest requested customer billing records from NT&T, the Fosters' service provider to address this concern. NT&T would not make the specific records available, but has reviewed those records and provided a written statement to the Commission that the Fosters were not assessed any trouble isolation charges during that period of time. Late-Filed Exhibit of Mike Orcutt E-Mail.

E. Joel Kennedy

Mr. Kennedy lives on the North cable route near Sparks, and is a Qwest customer. Tr. 45. Mr. Kennedy testified that his family had experienced problems

beginning in May 2005. Tr. 45-46. Many of these problems recurred after Qwest service technicians repaired the problems, and the service would function properly for a short time. Tr. 46-47. Mr. Kennedy testified that they called Qwest every time they experienced a problem. Tr. 47. The evidence shows twenty-two trouble reports since May 2005 – sixteen reflected in Ms. Cheshier's prefiled testimony, five in Ms. Cheshier's supplemental testimony, and one more in Ms. Cheshier's second supplemental testimony.

In addition, Mr. Kennedy testified that when problems occurred, he would often take his corded phone and plug it into the phone jack at the network interface device or demarcation point. Tr. 50-51, 55-56. When he performed this test, the phone would always work. Tr. 56. This evidence shows that the Qwest part of the network worked, but the wiring beyond the demarcation point often did not. Indeed, during the cooperative testing performed on several of the Customers' lines in late June 2006, Qwest technicians and Staff representatives observed irregular inside wiring that could potentially contribute to service quality problems. Cheshier Prefiled Testimony (Exhibit 7), Exhibit MPC-1; Tr. 202. Qwest cannot be held responsible for inadequate service quality when its service worked up to the demarcation point during periods when the service did not work inside the Kennedys' home. As Exhibit MPC-1 indicates, inside wire could be contributing to or exacerbating the problems the Kennedys have experienced.

Finally, the Kennedys made one trouble report to Qwest on July 24, 2006, a few days after the hearing, but none in the month since that time. This is a strong indication that the problems on the Qwest side of the network serving the Kennedys have been

resolved by the implementation of the GoDigital system.

F. Kristi Colburn

Ms. Colburn lives on the South cable route. Tr. 61. Ms. Colburn testified to repeated problems, but did not call every time she experienced a service quality problem. Tr. 63. Ms. Colburn testified at the hearing that her service had improved since the beginning of 2006. Tr. 68. Ms. Colburn has not reported any trouble on her line in the six weeks since the hearing. This is true, even though as Ms. Cheshier's Second Supplemental Testimony indicates, during the time since the hearing, Qwest proactively contacted Ms. Colburn and several other customers along the South and Southwest cable routes to make sure they were no longer experiencing the problems reported at the hearing. Cheshier Second Supplemental Testimony, p.2.

G. Ted Hamling

Mr. Hamling lives northwest of Valentine, along the North cable route. Tr. 70. Though Mr. Hamling described his problems as less serious than those of other Customers testifying at the hearing, Tr. 71, Mr. Hamling had notified Qwest of several trouble reports; the last being June 1, 2006. Cheshier Prefiled, at 14, Cheshier Supplemental, at 4. However, Mr. Hamling has not reported any trouble with his service since that time, or since the hearing. Cheshier Second Supplemental.

H. Shannon Ravenscroft

Ms. Ravenscroft moved into her home along the Southwest cable route in January 2005. Tr. 78-79. She testified that she began experiencing problems in March 2005 when work on the GoDigital system began. Tr. 79. She did not report all of these problems to Qwest. Tr. 80. Ms. Ravenscroft last reported trouble with her service on

July 1, 2006. Cheshier Supplemental, p. 3. Ms. Ravenscroft has not reported any trouble on her line in the six weeks since the hearing – even though Qwest has proactively asked her about her service quality since that time. Cheshier Second Supplemental Testimony.

I. Delores Colburn

Ms. Colburn has lived along the South cable route since 1953. Tr. 89. She called every time she experienced a problem, because Qwest representatives “said call every time. If you don’t call, we can’t help you.” Tr. 90. She praised the work of the Qwest people she dealt with, Tr. 142-143, and testified that during the two months prior to the hearing, her service had been “very good.” Tr. 91. Ms. Colburn has not reported any trouble on her line in the six weeks since the hearing – even though Qwest has proactively asked her about her service quality since that time. Cheshier Second Supplemental Testimony.

J. Rick Wolfenden

Mr. Wolfenden lives on the South cable route. Tr. 100. Mr. Wolfenden testified to a number of phone service problems, but reported “nothing but praise for the Qwest repairmen.” Tr. 101, 103. Mr. Wolfenden testified that his service had improved since the beginning of 2006, Tr. 108; 111. Mr. Wolfenden has not reported any trouble on his line in the six weeks since the hearing – even though Qwest has proactively asked her about her service quality since that time. Cheshier Second Supplemental Testimony.

K. Annie Kime

Ms. Kime lives along the South cable route. Tr. 112. She has three lines, two of which are used for her business. Tr. 112. She testified that she did not always call

Qwest to report problems – “not as many times as I should have.” Tr. 117. Ms. Kime testified that her service had improved since a new card was installed the day before the hearing, Tr. 122, and had improved in the two months prior to hearing. Tr. 123. Ms. Kime has not reported any trouble on her line in the six weeks since the hearing – even though Qwest has proactively asked her about her service quality since that time. Cheshier Second Supplemental Testimony.

L. Michelle Perrett

Ms. Perrett lives along the Southwest cable route. Tr. 125. Ms. Perrett testified to intermittent problems that occur primarily in spring and fall. Tr. 125-126. She also testified that she does not call to report trouble every time she experiences problems. Tr. 131. She testified to problems with ringing through the night, but testified that problem had not occurred “in the last few years,” Tr. 125-126. Ms. Perrett last reported trouble on April 20, 2006. Tr. 129; Cheshier Supplemental p. 2. Ms. Perrett has not reported any trouble in the six weeks since the hearing. Cheshier Second Supplemental.

M. Liz Ravenscroft

Liz Ravenscroft lives near Shannon Ravenscroft on the Southwest cable route. Tr. 133. She testified to “really bad” problems in April 2006. Tr. 134. Ms. Ravenscroft has placed four trouble reports to Qwest, with the last being placed on June 5, 2006. Cheshier Prefiled at 9, Cheshier Supplemental at 2, Cheshier Second Supplemental. Liz Ravenscroft has not reported any trouble on her line in the six weeks since the hearing – even in response to proactive inquiries from Qwest. Cheshier Second Supplemental.

N. Other Customers

Three persons that filed service quality complaints with the Commission did not testify at the hearing: Kurt Busenitz, Stan Hanson, and Gary McLeod. Mr. Busenitz made three trouble reports, the last on April 14, 2006. Cheshier Prefiled, p. 8. Mr. Hanson made four trouble reports, the last on June 6, 2006, which resulted from a cable cut. Cheshier Supplemental Testimony, p. 4. Mr. Hansen's location was also among those identified during testing in late June 2006 as having "customer owned wiring beyond the network interface that is questionable and could contribute to noise/static on the line." Exhibit MPC-1 to Cheshier Prefiled. Mr. MacLeod made twelve trouble reports, the last on December 6, 2005. Cheshier Prefiled, p. 8. None of these Customers have made any trouble reports since the time of the hearing. Cheshier Second Supplemental, p. 2. The evidence regarding these Customers is consistent with the testimony of the other Customers: evidence of intermittent problems during late 2005 and early 2006, and evidence of substantial improvement since that time.

O. Qwest Testimony

As noted above, the bulk of the problems discussed at the hearing correspond to the time when Qwest installed the GoDigital system along the South and Southwest cable routes. Ms. Cheshier testified that most of these problems "were isolated to the GoDigital technology . . . and for the most part have been completely resolved." Cheshier Prefiled, p. 5. Qwest installed the GoDigital system to solve and prevent service quality problems in the Valentine exchange. Mr. Hussain testified that the GoDigital system is a "very good replacement" of the pre-existing analog carrier systems, Tr. 230, and "is the only equipment, the only type of system, approved to use

in a rural area [with] this length of cable distance.” As of today, the GoDigital system has accomplished that goal. As noted in Ms. Cheshier’s Second Supplemental Testimony, trouble reports are at minimal levels in the Valentine exchange, and only two Customers have placed trouble reports since the hearing.

The installation of the GoDigital system has been a huge undertaking. Qwest has invested approximately \$3,000,000 in the GoDigital system over the last two years. Tr. 173. All of this money and investment were directed to the few hundred customers in rural Valentine. *Id.* The specific investments, and the plan to upgrade the Qwest network in the Valentine exchange by installing the GoDigital system were specifically approved in Docket NUSF-7.07. Confidential Attachment C to Qwest’s Application in that docket described the specific investment in digital carrier systems in Valentine and other Nebraska exchanges, and the Commission approved this plan in its order dated October 6, 2004, which required Qwest to use the NUSF distributions awarded by its order “only for the purposes described by Qwest in its Application.” While this investment is supported by NUSF distributions pursuant to docket NUSF-7.07, it still represents a huge investment in service quality in Valentine. In addition to this capital investment, Qwest has also invested more than 9,200 hours of technician time in the Valentine exchange between June 2005 and February 2006. Tr. 172-173; Hubbard Prefiled p. 5-6.

Unfortunately, the installation of the GoDigital system was problematic. Over the short term, the installation along the South and Southwest cable routes actually increased some problems. Part of these problems resulted from the long loop lengths in the Valentine exchange. Tr. 235-236. Mr. Hussain testified that the systems

experienced 20 to 50 drops per day at first. Tr. 229. However, Qwest worked to resolve these problems by installing additional equipment and doing additional testing, as described at page 5 of Mr. Hussain's prefiled testimony:

- GoDigital has upgraded/replaced 20 straight Through Repeaters Local Power (STRLP) # 990250 cards.]
- GoDigital upgraded CTU cards in the central office in order to remotely monitor the systems and provide detailed data regarding drop links on a daily basis.
- GoDigital identified the need for maintenance monitoring software to be downloaded to technician laptops. This software was acquired and deployed in December, 2005.
- GoDigital recommended "Megger" test sets for testing and trouble isolation in December of 2005. Megger testing consists of a digital volt meter that uses up to 1000 volts for testing continuity, and verifies the integrity of the insulation of the conductors. A POTS line typically has 52 volts on it, and the GoDigital systems run 260 volts across the pair. Five sets were purchased in December of 2005. These new test sets will help Qwest more easily and quickly isolate problems with the GoDigital systems in the future.
- Serving Area Interface ("SAI") replacement at 111 S Main and 2 blocks of cable replaced
- GoDigital is monitoring the performance of the system digital components and providing daily readings. This allows for proactive isolation of potential system failure.

Since the hearing, Ms. Cheshier has testified in her Second Supplemental Testimony that Qwest has undertaken the following measures:

- Daily monitoring and readouts of the GoDigital system with Qwest and the manufacturer.
- GoDigital engineers tech support field visit to Valentine Aug 7 through Aug 11th for comprehensive review.
- GoDigital downloaded new software to prevent phantom drops from being reported by the system. Phantom drops are a kind of false positive result; that is, phantom drops report potential trouble when none exists, which makes

diagnosing and resolving actual problems more difficult. This was done as a precaution to completely eliminate any suspicion as a cause of service interruption.

- Deployed additional CTU8 (channel termination) smart cards for a current total of 43. These cards enable more definitive monitoring, (frequency, duration, location) for trouble isolation of system drops (drops are interruptions of signal continuity that can but do not necessarily result in lost connections for customers). These cards were strategically placed on the systems located along the furthest distances from the office.
- Established a test line from the Central Office to one of the ADR's (add drop repeater) on system #6 to be monitored for drops. This is a spare that is located near the end of the Southwest route. This test line will enhance Qwest's ability to test and monitor the GoDigital systems.
- Senior Engineers, who are power subject matter experts, traveled to the area to perform additional testing and review the quality of bonding and grounding at repeater sites. Additionally, they provided more in depth training of the earth "megger" test sets to the local technicians.
 - 25 sites have been identified for improvement in bonding and grounding. To date, half are completed with a target date for all to be completed by Sept 1st. The identified improvements include adding additional ground rods and/or ensuring all are tied together, and will help minimize outages, interruptions, or signal quality loss during lightning events and impulse noise events. The lower the resistance to earth, the faster impulses from whatever source can dissipate to earth, which should prevent resets and dropped calls.
- Analysis was conducted in the Central Office regarding the Switch and interaction of the automatic switch testing option. This option triggers the Ericsson switch to test the line right after a call is completed. This testing also triggered the GoDigital remote units to begin the test routine which takes up to 60 seconds to complete. If the customer happened to pick up the phone again during this testing process they may temporarily experience a no dial tone situation during the test routine. The analysis also revealed this automatic testing process may be causing some of the phantom ringing at the subscribers' homes. The decision was made to turn off this option on 10 select systems.
 - Calls have been made to the following complainants: Kimes, Wolfendens, Colburns, Ravenscrofts and Brueklandens. They all reported they have not experienced any no dial tone situations, nor any phantom ringing lately.
- Two construction technicians that normally would have been redeployed after the GoDigital turnup was completed on July 12th, have been retained to stay in this

exchange until the additional testing and associated work is completed.

- Dedicated a Field Manager to oversee the quality analysis of activity.

After Qwest worked to resolve the problems with the GoDigital systems, these drops have decreased to “zero per week.” Tr. 229, Hussain Prefiled p. 5. As noted above, trouble reports are also correspondingly low since the hearing. Qwest has demonstrably resolved practically all service quality problems in rural Valentine.

Moreover, as Mr. Hubbard testified, even during the periods of the most significant problems with the GoDigital system, trouble reports never exceeded six per hundred per month in any single month, much less over a six-month period as described in Rule 002.04C. Hubbard Prefiled p. 3-4; Exhibit RJH-1. In fact, trouble reports have not exceeded three per hundred – half the Commission standard – in any month since the beginning of 2006. *Id.* These statistics are properly viewed against the backdrop of exemplary service quality throughout the state. Qwest’s trouble reports statewide have not exceeded two per hundred in any month since the beginning of 2004. Exhibit RJH-1 to Hubbard Prefiled.

In light of the evidence presented at the hearing, and in view of the evidence of Qwest’s service quality since the hearing, under the applicable legal standards, Qwest’s service cannot be found to be in violation of any Commission rule, regulation, or order. Regardless, in order to assure the Commission and the Customers that service quality is and will continue to be excellent, not merely adequate, Qwest is willing to agree to the following service quality assurance plan. This plan is modeled on the plan ordered in the Alltel proceeding in docket C-2483, adapted for the circumstances in this case.

VI. *Proposed Service Quality Assurance Plan*

Qwest does not believe that the evidence warrants any finding that Qwest's access line service in the Valentine exchange is not adequate, or that Qwest violated any commission order, rule, or regulation. Nevertheless, in order to provide the Commission and consumers assurance that Qwest's service is and will remain of the highest quality, Qwest proposes the following plan. Portions of this plan involve remuneration directly to customers, and accountability to consumers if Qwest fails to meet certain performance standards, which the Commission is without jurisdiction to order under the relief requested or the statutes, rules, or regulations at issue in the Complaint. Qwest is nevertheless willing to agree to such a plan as a resolution of this case. Qwest wishes to make clear, however, that by offering this plan Qwest does not admit any of the allegations of the Complaint, or that any relief requested thereunder is appropriate or authorized under the evidence or under the relevant law. Qwest further notes that it will agree only to this plan, as articulated here, as an alternate resolution of the case. If the Commission modifies or rejects any portion of the plan whatsoever, Qwest reserves its rights to revoke its offer and will likely oppose any different relief or plan ordered by the Commission. Qwest takes this position because the plan it proposes goes beyond anything the Commission has authority to order and is entirely focused on the complaining Qwest customers in Valentine. This is in stark contrast to the staff's request for punitive measures against Qwest alone, none of which will benefit Valentine subscribers to Qwest service.

With that said, Qwest offers the following plan as an alternate resolution of this

case:¹⁵

A. Steps to Resolve Service Quality Issues in Rural Valentine

1. In addition to the work described in the testimony filed before, during, and after the hearing, and other measures needed in the ordinary course of business to maintain service quality, Qwest will inspect and thoroughly test each segment of cable on the South and Southwest cable routes in rural Valentine, and replace any cable that is substandard. Testing will include the segment methodology mentioned in the testimony of Don Gray, and additional testing as deemed necessary by Qwest engineers to assure accurate results and excellent service quality. Qwest has already completed this testing for the North cable route. Qwest will share testing results with Staff, including the testing on the North route. Cable segment testing along the South and Southwest routes may require several customers to be without service for a time during the testing for each segment; accordingly, testing will be phased to minimize and spread out service outages. This testing will be completed on or before December 31, 2006. Any cable replacement required will be installed as soon as practicable after any test shows a cable segment is substandard, but in no event later than the end of June, 2007 (subject to delays beyond Qwest's control in obtaining easements, right-of-way access, or permits, customer-caused delays, or force majeure events).

2. Qwest will continue to test and inspect GoDigital systems and cards

¹⁵ Because of the unique nature of this proposed resolution, Qwest has separately requested oral argument in order to make sure that the Commission understands all of the aspects of the proposed plan, and to discuss with Staff and the Commission potential clarifications or minor modifications to the plan that might be acceptable to all parties concerned.

for possible problems, and immediately repair or replace any defective equipment.

3. Qwest does not believe it has any legal responsibility for the quality of inside wire – that is, wiring on the customer's side of the Network Interface Device (NID) – or for service quality problems that result from inside wire. Nevertheless, in order to resolve this case in a manner that focuses on Qwest's customers, and as partial recognition for the service quality issues testified to at the hearing in this case, Qwest will inspect, test, and, if necessary, repair or replace the inside wire of the primary premise of any Qwest retail customer Customer. Qwest, staff, and NT&T will need to work together to develop appropriate ways to involve NT&T and its affected retail customers in these processes. Assuming Customers, NT&T, and all other owners of rights-of-way or property required for such work grant the necessary access, inspection and testing of Customers' inside wire will be completed by October 31, 2006, and all repairs indicated by such testing will be completed by November 15, 2006.

4. Qwest will meet with Staff regularly to discuss Qwest's progress regarding trouble reports, service outages, and other service quality measures contained in the reporting section below. During September, and October, 2006, these meetings shall occur not less often than monthly. Beginning in November 2006, Qwest and Staff may change this schedule by mutual agreement.

5. Qwest is also willing to call each Customer monthly for the next six months to inquire about the quality of their service, and/or hold and/or attend workshops or meetings in the Valentine area at which customers may speak

face-to-face with Qwest policy and network managers to make sure service quality continues to be adequate. Qwest, staff, and NT&T will need to work together to develop appropriate ways to involve NT&T and NT&T retail customers in these processes, as Qwest cannot contact NT&T customers directly. The aim of this proposal is to make clear that Qwest is willing to work with the Commission and Staff to develop non-traditional measures to test and verify service quality.

B. NUSF Investment

1. Qwest has invested more than \$4.4 million in maintaining and upgrading its network in the Valentine exchange since the beginning of 2003. These amounts do not include typical day-to-day installation and maintenance activities, or the digital carrier -related investments Qwest has made in connection with the NUSF-7 plan, nor do these amounts include amounts used to keep rates in Valentine affordable and reasonably comparable to rates in more dense areas of Nebraska.

2. In addition to the steps Qwest is already taking to rectify the service quality problems discussed above, the steps outlined in this proposal, and the service quality monitoring measures discussed below, Qwest will provide annual reports for the next three years indicating monies spent to upgrade, maintain, or replace portions of its network in the Valentine exchange. Qwest does not believe that any particular level of investment by exchange is required by either statute or Commission order or rule, but will provide this investment and these

reports to Staff in order to resolve this case.

C. Recognition to Customers

1. Qwest will issue a check or credit to each Customer in the amount of \$150 per access line in recognition for the service quality problems experienced over the last fourteen months.

2. As indicated above, Qwest will inspect, test, and, if necessary, repair or replace inside wire at each Claimant's location, at Qwest's expense.

D. Reporting/Accountability

1. For the period as defined in section D.(4) below, Qwest will provide a monthly status report to Staff that includes the following information for residence and business POTS customers:

a. Repair, upgrade, and maintenance activity in the Valentine exchange.

b. Trouble report rate for retail POTS in the Valentine exchange.

c. Individual trouble reports supporting the reported trouble report rate.

d. The percentage of service outage reports in the Valentine exchange cleared in 24 hours or less. Individual instances of service outages will be reflected in the individual trouble report data from D(1)(c) above.

2. Qwest will also agree to provide GoDigital drop link reports on request from the Staff.

3. Qwest also agrees to issue an annual remedial credit to all of its residence and business POTS customers in the Valentine exchange if it fails to meet a Compliance Standard with regard to the above reporting information beginning on October 1, 2006. The remedial credit will be calculated on October 1, 2007, and each October 1 thereafter during the pendency of this plan. Qwest, staff, NT&T and any other affected CLECs will need to work together to develop appropriate ways to involve CLECs and CLEC retail customers in these processes, as Qwest already pays CLECs certain penalties under the QPAP for service quality issues and Qwest cannot directly credit NT&T customer accounts.

a. The Compliance Standard shall be six trouble reports per hundred residence and business POTS access lines per month in the Valentine exchange.

b. Measurements of the Compliance Standard shall exclude problems caused by extreme weather conditions, force majeure events, problems caused by customer inside wire or other causes outside of Qwest's control, and the cable segment testing described above.

c. The remedial credit shall be \$1 for each access line for each month in which the Compliance Standard is not met during the preceding twelve-month period. If the Compliance Standard is not met for four or more months in any year, the remedial credit shall increase to \$2 per access line per month in which the Compliance Standard is not met.

4. Qwest will provide these reports and be subject to these remedial credits until Qwest meets a specified Threshold Standard for four consecutive months. This "Threshold Standard" is more stringent than those standards used in Commission rules and those used as the Compliance Standard above, but Qwest is willing to use increased standards for the Valentine exchange as a method to resolve this case and assure Staff and the Commission that its service quality in Valentine significantly and consistently exceeds the minimum objective standards for adequate service before returning to normal levels of reporting and performance standards.

a. The Threshold Compliance Standard shall be four trouble reports per hundred customers per month in the Valentine exchange.

b. Measurements for the Threshold Compliance Standard shall exclude problems caused by extreme weather conditions, force majeure events, problems caused by customer inside wire or other causes outside Qwest's control, and the cable segment testing described above..

VII. Conclusion

Qwest is serious about resolving the service quality problems that the Customers discussed at the hearing. Despite the fact that Qwest is confident that its access line service quality in Valentine is presently more than adequate, Qwest has invested millions of dollars and thousands of hours to prevent and resolve those problems over the past two years, and has proposed a plan to assure the Commission and Staff of its progress. As a legal matter, there is no justification for finding that Qwest's service is not "adequate" under Commission Rules, fining Qwest, or withholding NUSF support.

Fining Qwest or withholding NUSF support would represent an unprecedented and impermissible step for the Commission to take in this case – particularly given the facts that: (1) Qwest has never failed to meet any relevant objective service quality measures identified in the Rules; and (2) most of the problems reported resulted from a huge effort on Qwest's part to improve service quality in the Valentine exchange. Staff has alleged no misuse of NUSF funds, fraud, or other bad faith on the part of Qwest. The evidence demonstrates that both before and after the Complaint was filed, and before and after the hearing in this case, Qwest has worked diligently, has improved service quality in the Valentine exchange.

Given this evidence, no fine or NUSF withholding is proper. Even if a fine could be assessed, however, that fine should be minimal. Commission Rule of Procedure 027.02C, consistent with Neb. Rev. Stat. § 75-156(1) provides that in determining the amount of any penalty, the Commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.¹⁶ The evidence in this case shows a problem isolated to rural areas of a single exchange, and a problem that never exceeded the Commission Rules' objective service quality measures. The evidence also shows that Qwest has worked diligently to solve the problems both before and after the hearing, and Qwest's progress has resulted in the

¹⁶ In addition to demonstrating the current facts of the trouble reports in the Valentine exchange, the Second Supplemental Testimony of Mary Pat Cheshier is also offered to demonstrate Qwest's good faith in attempting to achieve (in Qwest's view maintain and improve) compliance after notification of the violation. As indicated in Qwest's motion to permit the filing of the Second Supplemental Testimony, the information therein is important to a full understanding of the facts in this case. The statutory criteria for imposing a penalty necessarily require the admission of the Second Supplemental testimony, if only to consider the criteria set forth in Neb. Rev. Stat. § 75-156(1) and Commission Rule of Procedure 027.02C(2).

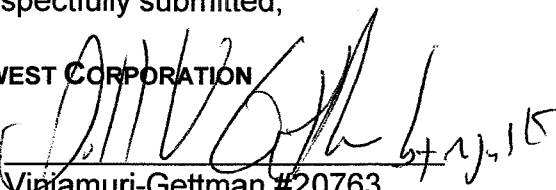
near elimination of the trouble reports previously seen, even from the customers in the most problematic portions of rural Valentine. These facts demonstrate at most a violation of extremely limited gravity, which Qwest has worked diligently to resolve before, during and after the hearing.

As a matter of good business, however, Qwest believes the best solution to these problems is a cooperative one – involving Qwest, the Commission, Staff, and Qwest's customers in the Valentine exchange. Qwest therefore requests that the Commission deny the claims and the relief sought in the Complaint, but nevertheless adopt Qwest's proposed plan to ensure that service quality remains excellent.

Dated Monday, August 28, 2006.

Respectfully submitted,

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CERTIFICATE OF SERVICE

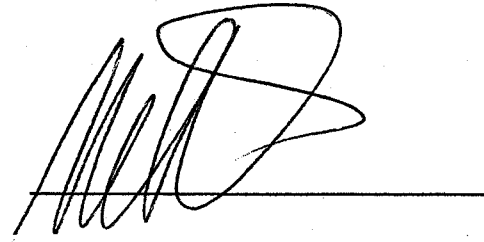
The undersigned hereby certifies that a true and correct copy of the foregoing
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A handwritten signature in black ink, appearing to be "Gene Hand", written over a horizontal line.